EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

RECEIVED

FEB 26 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SINDERBRAND & ALEXANDER

888 SIXTEENTH STREET, N.W.
SUITE 610
WASHINGTON, D.C. 20006-4103

TELEPHONE: (202) 835-8292

FACSIMILE: (202) 835-8136

February 26, 1993

Hon. James H. Quello
Chairman
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

Re: *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- Broadcast Signal Carriage Issues: MM Docket No. 92-259*
WRITTEN EX PARTE COMMUNICATION

Dear Chairman Quello:

With the Commission preparing to decide on the implementation of Section 6 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") next month, the Wireless Cable Association International, Inc. ("WCA") would like to take this opportunity to very briefly address the reply comments that responded to WCA's call for restrictions on the ability of cable television systems to extract exclusive retransmission consent agreements from broadcasters.

Given the documented predilection of cable systems to leverage their local monopolies to secure advantageous programming licensing agreements, WCA's initial comments called upon the Commission to adopt rules implementing Section 6 that for ten years ban cable operators from entering into agreements that either grant exclusivity or that require the broadcaster to discriminate against emerging competitors with respect to price or any other terms or conditions governing retransmission. The same concern has led a variety of other

No. of Copies rec'd 2 copies
List A B C D E

potential competitors of cable to propose similar rules.[1] Indeed, even one of the nation's larger cable multiple system operators has commented that:

> a retransmission consent agreement should not permit the exclusive carriage of a broadcast signal which precludes another cable system or multichannel video programming provider in the franchise area from obtaining access to that station's programming. Such an exclusivity provision would not be in the public interest.[2]

It comes as no surprise that no broadcaster has opposed WCA's proposals. The broadcasters recognize that their interests are best served by maximizing exposure to their signal through the liberal grant of retransmission consent to all multichannel video programming distributors in the market. The broadcasters know full well that they will be subject to pressure from the cable monopoly to grant exclusivity. For all of the rhetoric that the Commission has heard from cable about the supposed benefits exclusivity can provide programmers, it is telling that no broadcaster opposed WCA's proposal to restrict exclusivity.

Nor should it come as any surprise that the only two reply comments opposing WCA's proposal came from cable interests. Even cursory analysis, however, demonstrates that the arguments advanced against WCA's proposal are devoid of merit; they are part and parcel of cable's transparent ploy to retain the market power that the 1992 Cable Act was designed to eliminate.

For example, Viacom International, Inc. ("Viacom") claims that Commission regulation is unnecessary because "[i]t is unlikely that a local station electing retransmission would have any incentive to extract excessive retransmission consent fees from non-cable video programming distributors, since such distributors generally do not compete in any significant way with local stations for advertising dollars" and because "there is no reason to believe that

---

[1]*See, e.g.* Comments of Nat'l Private Cable Ass'n, MM Docket No. 92-259, at 6-13 (filed Jan. 4, 1993); Comments of WJB-TV Limited Partnership, MM Docket No. 92-259, at 4-5 (filed Jan. 4, 1993);Comments of Consortium of Concerned Wireless Cable Operators, MM Docket No. 92-259, at 3-4 (filed Jan. 4, 1993); Reply Comments of the U.S. Telephone Ass'n, MM Docket No. 92-259, at 2-6 (field Jan. 19, 1993); Reply Comments of Bell Atlantic, MM Docket No. 92-259, at 1-2 (filed Jan. 19, 1993).

[2]Reply Comments of InterMedia Partners, MM Docket No. 92-259, at 13-14 (filed Jan. 19, 1993).

local stations will agree to exclusive distribution in their retransmission consent agreements with cable systems."[3] Viacom is correct, but only in part.

WCA agrees with Viacom that it is not in the self-interest of any local broadcast station to grant exclusivity to cable systems or to charge excessive retransmission consent fees to non-cable multichannel video programming distributors. What Viacom conveniently ignores, however, is that it is in the self-interest of the local cable monopoly to demand exclusivity or other preferential treatment from broadcasters who have elected retransmission consent. The Commission has recognized already that a wireless cable system cannot effectively compete against cable unless its subscribers can receive local broadcast programming.[4] By using the market power derived from its *de facto* local monopoly, a cable operator has the ability and every incentive to extract exclusive retransmission consent and eliminate the prospect of wireless competition.

The National Cable Television Association ("NCTA") also opposes WCA's proposal, rationalizing that because exclusive retransmission consent agreements are not governed by Section 19 of the 1992 Cable Act, Congress intended for the antitrust laws alone to govern the granting of exclusivity by broadcasters.[5] NCTA's rationale, however, ignores Congress' express mandate that the Commission "ensure that the regulations prescribed under this subsection do not conflict with the Commission's obligation under section 623(b)(1) to ensure that the rates for the basic service tier are reasonable."[6]

It has been a given in Congress and at the Commission that competition, rather than regulation, is the most effective mechanism for keeping cable rates reasonable. And, as the Commission has recognized, consumers demand that their multichannel video programming distributors provide access to local broadcast signals. One need not have a Ph.D. in economics to figure that if cable systems can extract exclusivity from local broadcasters, they

---

[3]Reply Comments of Viacom International, Inc., MM Docket No. 92-259, at 5-6 (filed Jan. 1993).

[4]*See Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates*, 6 FCC Rcd 4545, 4553 (1991).

[5]*See* Reply Comments of Nat'l Cable Television Ass'n, MM Docket No. 92-259, at 21 n. 29 (filed Jan. 19, 1993).

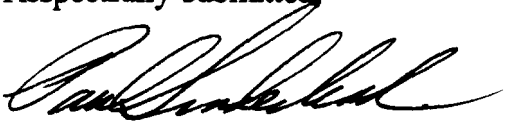
[6]46 U.S.C. § 325(b)(3)(A).

will avoid competition and cable rates will rise. The short answer to NCTA is provided by Rep. Rick Boucher, who wrote to you recently in endorsing WCA's proposal:

> Unless the Commission ensures that cable operators are not permitted to extract exclusivity or discriminatory provisions in retransmission consent agreements with local broadcasters, we will be handing cable operators a new weapon in their efforts to thwart competition. This would clearly be contrary to Congress' stated intent to increase competition and diversity in the multichannel video programming marketplace.

WCA's approach to retransmission consent has been carefully crafted to assure that it is fundamentally fair to all concerned. It is fair to the broadcasters (who have not objected), it is fair to the cable industry (at least one member of which has supported a ban on exclusivity), and most importantly, it is fair to consumers (who will benefit from increased choice in the marketplace and lower rates). The Commission can and should adopt WCA's proposal when it promulgates rules to implement Section 6.

Respectfully submitted,



Paul J. Sinderbrand

Counsel to Wireless Cable Association
International, Inc.

cc: Hon. Sherrie P. Marshall
Hon. Andrew C. Barrett
Hon. Ervin S. Duggan
Roy J. Stewart
William H. Johnson
Bruce A. Romano
Donna R. Searcy (2 copies for inclusion in docket)